

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOANN WILLIAMS,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration.

Defendant.

NO: 2:14-CV-0232-TOR

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

BEFORE THE COURT are the parties' cross-motions for summary

judgment (ECF Nos. 13, 18). Dana C. Madsen represents Plaintiff. Lars J. Nelson represents Defendant. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);
1383(c)(3).

STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means relevant evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
3 nondisability determination.” *Id.* at 1117 (internal quotation marks and citation
4 omitted). The party appealing the ALJ’s decision generally bears the burden of
5 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he is not only unable to do his previous
14 work[,] but cannot, considering his age, education, and work experience, engage in
15 any other kind of substantial gainful work which exists in the national economy.”
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education, and work experience. *Id.* If the claimant is capable of adjusting to
17 other work, the Commissioner must find that the claimant is not disabled. 20
18 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of
19 adjusting to other work, the analysis concludes with a finding that the claimant is
20 disabled and is therefore entitled to benefits. *Id.*

The claimant bears the burden of proof at steps one through four above.

Lockwood v. Comm'r of Soc. Sec. Admin., 616 F.3d 1068, 1071 (9th Cir. 2010). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ'S FINDINGS

Plaintiff protectively filed applications for a period of disability and disability insurance benefits on March 24, 2011, and for supplemental security income on March 4, 2011. Tr. 173-74, 175-83, 184-92. These applications were denied initially and upon reconsideration, and Plaintiff requested a hearing. Tr. 65-73, 74-82, 119-23, 124-29, 130-31. A hearing was held with an Administrative Law Judge (“ALJ”) on December 4, 2012. Tr. 35-62. The ALJ rendered a decision denying Plaintiff benefits on January 18, 2013. Tr. 9-27.

The ALJ found that Plaintiff met the insured status requirements of Title II of the Social Security Act through December 31, 2014. Tr. 14. At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since October 18, 2009, the alleged onset date. Tr. 14. At step two, the ALJ found that Plaintiff had the following severe impairment: major depressive disorder. Tr. 14. At step three, the ALJ found that Plaintiff did not have an impairment or

1 combination of impairments that meet or medically equal a listed impairment. Tr.

2 15. The ALJ then determined that Plaintiff had the RFC

3 to perform a full range of work at all exertional levels but with the
4 following nonexertional limitations: she is able to understand,
5 remember, and carry out simple one to two-step instructions or tasks;
6 she is able to maintain attention and concentration for two-hour
intervals between regularly scheduled breaks; and she should be
limited to rare interactions with the general public and occasional
interactions in small groups with co-workers.

7 Tr. 17. At step four, the ALJ found that Plaintiff was unable to perform any past
8 relevant work as an office helper, shipping and receiving clerk, order picker, fast
9 food worker and manager, short order cook, machine packager, or hand packager.

10 Tr. 21. At step five, the ALJ found that Plaintiff could perform the representative
11 occupations of fish cleaner, dining room attendant, and laundry worker. Tr. 22. In
12 light of the step five finding, the ALJ concluded that Plaintiff was not disabled
13 under the Social Security Act and denied her claims on that basis. Tr. 23.

14 The Appeals Council denied Plaintiff's request for review on May 22, 2014,
15 making the ALJ's decision the Commissioner's final decision for purposes of
16 judicial review. Tr. 1-6; 20 C.F.R. §§ 404.981, 416.1484, 422.210.

17 ISSUES

18 Plaintiff seeks judicial review of the Commissioner's final decision denying
19 her disability benefits and supplemental security income under Titles II and XVI of
20 the Social Security Act. Plaintiff raises the following two issues for review:

- 1 (1) Whether the ALJ properly discounted Plaintiff's credibility; and
- 2 (2) Whether the ALJ properly weighed the medical opinion evidence.

3 ECF No. 13 at 12-19. This Court addresses each issue in turn.

4 DISCUSSION

5 A. Adverse Credibility Finding

6 Plaintiff contends the ALJ improperly discredited her symptom testimony.
7 *Id.* at 12. In support, Plaintiff asserts that (1) the medical evidence supports her
8 testimony regarding her mental health symptoms; and (2) her failure to seek
9 treatment was justified because her condition did not improve with medication, she
10 could not afford treatment, and her mental condition interfered with her ability to
11 seek treatment. *Id.* at 12-16.

12 “In assessing the credibility of a claimant’s testimony regarding subjective
13 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.”
14 *Molina*, 674 F.3d at 1112 (citing *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.
15 2009)). First, the ALJ must determine whether the claimant has proved the
16 existence of a physical or mental impairment with “medical evidence consisting of
17 signs, symptoms, and laboratory findings.” 20 C.F.R. §§ 416.908, 416.927; *see*
18 *Molina*, 674 F.3d at 1112. A claimant’s statements about his or her symptoms
19 alone will not suffice. 20 C.F.R. §§ 416.908, 416.927. “Once the claimant
20 produces medical evidence of an underlying impairment, the Commissioner may

1 not discredit the claimant’s testimony as to subjective symptoms merely because
2 they are unsupported by objective evidence.” *Berry v. Astrue*, 622 F.3d 1228,
3 1234 (9th Cir. 2010) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995));
4 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the
5 impairment “could reasonably be expected to produce the pain or other
6 symptoms,” the claimant may offer a subjective evaluation as to the severity of the
7 impairment. *Bunnell*, 947 F.2d at 345-56. This rule recognizes that the severity of
8 a claimant’s symptoms “cannot be objectively verified or measured.” *Id.* at 347
9 (citation omitted).

10 However, an ALJ may conclude that the claimant’s subjective assessment is
11 unreliable, so long as the ALJ makes “a credibility determination with findings
12 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
13 arbitrarily discredit claimant’s testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
14 (9th Cir. 2002); *see also Bunnell*, 947 F.2d at 345 (“[A]lthough an adjudicator may
15 find the claimant’s allegations of severity to be not credible, the adjudicator must
16 specifically make findings which support this conclusion.”). If there is no
17 evidence of malingering, the ALJ’s reasons for discrediting the claimant’s
18 testimony must be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d
19 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ “must
20 specifically identify the testimony she or he finds not to be credible and must

1 explain what evidence undermines the testimony.” *Holohan v. Massanari*, 246
2 F.3d 1195, 1208 (9th Cir. 2001); *see Berry*, 622 F.3d at 1234 (“General findings
3 are insufficient; rather, the ALJ must identify what testimony is not credible and
4 what evidence undermines the claimant’s complaints.”).

5 In weighing the claimant’s credibility, the ALJ may consider many factors,
6 including ““(1) ordinary techniques of credibility evaluation, such as the claimant’s
7 reputation for lying, prior inconsistent statements concerning the symptoms, and
8 other testimony by the claimant that appears less than candid; (2) unexplained or
9 inadequately explained failure to seek treatment or to follow a prescribed course of
10 treatment; and (3) the claimant’s daily activities.”” *Chaudry v. Astrue*, 688 F.3d
11 661, 672 (9th Cir. 2012) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
12 Cir. 2008)). If the ALJ’s finding is supported by substantial evidence, the court
13 may not engage in second-guessing. *Id.* (quoting *Tommasetti*, 533 F.3d at 1039).

14 Here, the ALJ found that although Plaintiff’s “medically determinable
15 impairments could reasonably be expected to cause some of the alleged
16 symptoms,” her “statements concerning the intensity, persistence, and limiting
17 effects of these symptoms are not entirely credible.” Tr. 18. Because there is no
18 evidence of malingering in this case, the Court must determine whether the ALJ
19 provided specific, clear, and convincing reasons not to credit Plaintiff’s testimony
20 regarding the limiting effect of her symptoms. *Chaudhry*, 688 F.3d at 672.

1 Although Plaintiff contends that the ALJ improperly conducted an adverse
2 credibility analysis, this Court disagrees. The ALJ provided the following specific,
3 clear, and convincing reasoning supported by substantial evidence for finding
4 Plaintiff's subjective statements not fully credible: (1) the medical evidence of
5 record did not support the degree of limitation alleged by Plaintiff; and (2)
6 Plaintiff's failure to seek treatment was inconsistent with the disabling symptoms
7 alleged. Tr. 18-20.

8 First, the ALJ found the medical evidence, which signaled a broader
9 development of improvement, did not support the degree of limitation alleged by
10 Plaintiff. Although Plaintiff testified to debilitating depressive symptoms, such as
11 anhedonia, a lack of motivation, discouragement, difficulty sleeping, and difficulty
12 concentrating, the ALJ found Plaintiff's condition improved with medication and
13 thus the record did not support the degree of limitation alleged. Tr. 18-19. For
14 instance, after Plaintiff was hospitalized for depression in November 2009, she
15 reported "feeling much better" with use of medication. Tr. 19 (citing Tr. 289); *see*
16 also Tr. 19 (citing Tr. 310 ("[Claimant] stated that the medication had been
17 helpful.")). Plaintiff subsequently discontinued her medication, reporting to a
18 provider that she did not want to take them anymore. Tr. 19 (citing Tr. 370).
19 However, one week after restarting medication in August 2010, Plaintiff was
20 observed by a provider to be "more animated" with an "increased range of affect."

1 Tr. 19 (citing Tr. 374). Similarly, in September 2010, after continued use of
2 medication, Plaintiff's provider noted "significant improvement" in Plaintiff's
3 condition, finding that Plaintiff appeared "brighter and more interactive." Tr. 19
4 (citing Tr. 379); *see also* Tr. 378 (treatment notes following antidepressant
5 medication use noted Plaintiff reporting that she was "feeling better"). In
6 December 2010, Plaintiff presented for refills of her medications—several months
7 after she ran out—and reported that "she feels better when she takes her
8 medications, less depressed, and she sleeps better when she has them."¹ Tr. 380.
9 Although the ALJ acknowledged that Plaintiff's affect was still limited,
10 improvement was documented. Tr. 19 (citing Tr. 374, 379).

11 While "it is error to reject a claimant's testimony merely because symptoms
12 wax and wane in the course of treatment," an ALJ may rely on examples of
13 "broader development" of improvement when finding a claimant's testimony not
14 credible. *Garrison v. Colvin*, 759 F.3d 995, 1017-18 (9th Cir. 2014) ("While ALJs
15 obviously must rely on examples to show why they do not believe that a claimant
16 is credible, the data points they choose must *in fact* constitute examples of a

17 ¹ Although prior to the relevant period of alleged disability, the ALJ also noted a
18 similar trend in 2006: "The claimant reported that she had significant depression
19 several years prior, but she was placed on medication and did 'quite well' until she
20 stopped using them around 2006." Tr. 18 (citing Tr. 281).

1 broader development to satisfy the applicable ‘clear and convincing’ standard.”).
2 Despite Plaintiff’s contention here, the ALJ did not inappropriately “cherry pick”
3 periods of temporary well-being; rather, the ALJ noted that Plaintiff’s condition
4 consistently improved when she followed her prescribed course of medication and
5 discredited her testimony on that basis. *See Warre v. Comm’r of Soc. Sec. Admin.*,
6 439 F.3d 1001, 1006 (9th Cir. 2006)(“Impairments that can be controlled
7 effectively with medication are not disabling for the purpose of determining
8 eligibility for . . . benefits.”).

9 Second, and relatedly, the ALJ found Plaintiff’s statements concerning the
10 severity of her limitations inconsistent with her failure to follow a prescribed
11 course of treatment. Despite Plaintiff’s improvement with medication use, detailed
12 above, the ALJ noted over a one-year gap in treatment, which cast doubt on the
13 severity of Plaintiff’s symptoms: “The claimant’s lack of follow-up for over a year
14 again suggests that her condition did not significantly interfere with her
15 functioning.” Tr. 20. Although Plaintiff attempted to explain her lack of
16 treatment, the ALJ did not find these explanations convincing. For instance,
17 although Plaintiff asserted an inability to afford medications, the ALJ noted that (1)
18 she testified at the hearing that she had medical insurance through the state, Tr. 19,
19 and (2) even if Plaintiff did not have insurance, the lack of insurance would not
20 have precluded Plaintiff from receiving treatment considering the availability of

1 patient assistance programs. Tr. 20 (citing Tr. 390 (“Learned [patient] can get
2 Zyperxa, which was helpful in the past, on a patient assistant program, this is
3 prescribed.”)); *see* Tr. 381 (referring Plaintiff to Project Access Coordinator to
4 determine whether there may be resources available to help with expense of
5 medications). Moreover, the ALJ found inconsistencies in Plaintiff’s reasoning for
6 not following a prescribed course of treatment: Plaintiff reported to providers that
7 she stopped taking medication because “she did not want to anymore,” and that she
8 could not afford medications but would try counseling, which the ALJ determined
9 was inconsistent because someone who could not afford medications could likely
10 not afford counseling. Tr. 20. Finally, the ALJ had reason to doubt Plaintiff’s
11 commitment to counseling. As the ALJ had previously noted, although Plaintiff
12 was enrolled in counseling in February 2010, she only met with a therapist once
13 and failed to appear at subsequent appointments or otherwise respond to
14 voicemails or letters. Tr. 19 (citing Tr. 293). Plaintiff was subsequently referred
15 to a counselor in February 2012, Tr. 20 (citing Tr. 391); however, there is no
16 evidence that Plaintiff complied with this referral, Tr. 20. Indeed, Plaintiff
17 reported to one provider that she “did not follow through with counseling because
18 she did not like being there.” Tr. 402. Accordingly, Plaintiff’s inadequately
19 explained failure to follow a prescribed course of treatment provided another clear
20 and convincing reason for discounting her credibility. *See Tommasetti*, 533 F.3d at

1 1039 (finding that a plaintiff’s “unexplained or inadequately explained failure to
2 seek treatment” provided legitimate reason for rejecting claimant’s credibility).

3 **B. Medical Opinions**

4 Plaintiff also contends the ALJ failed to properly weigh the medical opinion
5 evidence. ECF No. 13 at 16-19. In support, Plaintiff faults the ALJ for rejecting
6 the opinions of Dr. Pollack and giving greater weight to the opinions of Dr.
7 Chandler and Dr. Veraldi. *Id.*

8 There are three types of physicians: “(1) those who treat the claimant
9 (treating physicians); (2) those who examine but do not treat the claimant
10 (examining physicians); and (3) those who neither examine nor treat the claimant
11 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”

12 *Holohan*, 246 F.3d at 1201-02 (citations omitted). A treating physician’s opinions
13 are generally entitled to substantial weight in social security proceedings. *Bray v.*
14 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). If a treating or
15 examining physician’s opinion is uncontradicted, an ALJ may reject it only by
16 offering “clear and convincing reasons” that are supported by substantial evidence
17 in the record. *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1198 (9th Cir.
18 2008); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the
19 ALJ need not accept the opinion of any physician, including a treating physician, if
20 that opinion is brief, conclusory and inadequately supported by clinical findings.”

1 Bray, 554 F.3d at 1228 (quotation and citation omitted). If a treating or examining
2 doctor's opinion is contradicted by another doctor's opinion, an ALJ may only
3 reject it by providing "specific and legitimate reasons" that are supported by
4 substantial evidence in the record. *Valentine v. Comm'r of Soc. Sec. Admin.*, 574
5 F.3d 685, 692 (9th Cir. 2009); *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at
6 830-31).

7 Plaintiff contends the ALJ did not give sufficient weight to the findings of
8 examining psychologist, Dr. Dennis Pollack, Ph. D. ECF No. 13 at 7, 17-19. Dr.
9 Pollack examined Plaintiff in November 2012, at the request of Plaintiff's
10 representative, and opined that Plaintiff would have marked limitations in her
11 ability to perform activities within a schedule, maintain regular attendance, be
12 punctual within customary tolerances, complete a normal workday or workweek
13 without interruptions from psychologically based symptoms, and perform at a
14 consistent pace without an unreasonable number of rest periods. Tr. 399-408.

15 This Court finds that ALJ properly evaluated the opinion of Dr. Pollack and
16 reasonably provided the opinions of Dr. Veraldi and Dr. Chandler greater weight.
17 Because Dr. Pollack's opinion was contradicted, *see* Tr. 20-21, the ALJ need only
18 have provided "specific and legitimate" reasoning for rejecting it. *Bayliss*, 427
19 F.3d at 1216.
20

1 First, the ALJ found Dr. Pollack's opinion was not supported by the
2 evidence in the record. For instance, the ALJ noted Dr. Pollack's opinion that
3 Plaintiff was unable to complete a normal workday or workweek was not
4 supported by objective findings. Tr. 20. Further, as testified to by Dr. Donna
5 Veraldi, Ph. D., at the hearing, Plaintiff might become depressed once every six
6 months but would not routinely be missing work because of her condition. Tr. 20;
7 *see* Tr. 44. Because Dr. Veraldi was able to review all of the medical evidence and
8 her opinion was consistent with the findings of Dr. Chandler,² the ALJ gave Dr.
9 Veraldi's conclusions greater weight. Tr. 21. Because contrary opinions, in
10 addition to objective medical evidence, provide a specific and legitimate reason for
11 rejecting a medical opinion, *see Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
12 Cir. 2001), the ALJ provided a specific and legitimate reason for rejecting Dr.
13 Pollack's opinion.

14 Second, the ALJ noted inconsistencies in Dr. Pollack's own assessment.
15 Although Dr. Pollack opined that Plaintiff had marked limitations in maintaining a
16 schedule and completing a normal work day, the ALJ commented that Dr.

17 ² The ALJ afforded the opinion of Dr. Samantha Chandler, Psy. D., "significant
18 weight . . . because she was able to examine the claimant personally and her
19 conclusions are consistent with her objective findings during the evaluation." Tr.
20 19.

1 Pollack's notes also indicated Plaintiff suffered no significant limitations in the
2 majority of the functioning categories. Tr. 20; *see* Tr. 406. Further, although Dr.
3 Pollack opined that Plaintiff had marked limitations in her ability to perform
4 activities within a schedule, maintain attendance, or be punctual within customary
5 tolerances, he also noted that Plaintiff arrived on time or early to her evaluations.
6 Tr. 20; *see* Tr. 400. Because inconsistencies between a doctor's opinion and his
7 own reports, provide a specific and legitimate reason for rejecting even a treating
8 doctor's opinion, *see Bayliss*, 427 F.3d at 1216 (finding a discrepancy between a
9 doctor's opinion and his other recorded observations and opinions provided a clear
10 and convincing reason for not relying on that doctor's opinion), the ALJ provided
11 another specific and legitimate reason for rejecting Dr. Pollack's opinion.

12 | IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**.
 2. Defendant's Motion for Summary Judgment (ECF No. 18) is **GRANTED**.

16 The District Court Executive is directed to file this Order, enter Judgment
17 for Defendant, provide copies to counsel, and **CLOSE** the file.

18 | DATED June 12, 2015.



THOMAS O. RICE
United States District Judge